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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,346	01/28/2002	Beverly Richard		1507
7590 11/18/2004				
KENNETH D. BAUGH 2413 Blodgett Houston, TX 77004				
			EXAMINER WATKINS III, WILLIAM P	
			ART UNIT 1772	PAPER NUMBER

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/057,346	Applicant(s) 76 RICHARD, BEVERLY	
	Examiner William P. Watkins III	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August and 06 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. The 112 rejections have been withdrawn in view of applicant's amendments in the paper filed 30 August 2004
2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAtee et al. (U.S. 6,280,757).

The reference teaches two outer layers, which maybe made of paper fibers and an internal patterned adhesive layer with a cleaning substance in the pattern of the adhesive (Figures 4 and 5 and the abstract). More than two plies may also be used with any or all of the plies being apertured (col. 6, lines 50-60). The cleaning substance may be added onto or impregnated into any or all of the surfaces of the different layers, either before or after they are joined (col. 30, lines 45-60). A biocide may be an optional ingredient (col. 30, lines 10-30). The instant invention claims a three layer structure with an antibacterial

agent. It would have been obvious to one of ordinary skill in the art to add a bacterial agent from the options given in the reference in order to enhance the hygiene of the tissue.

4. Applicant's arguments filed 30 August 2004 and 06 July 2004 have been fully considered but they are not persuasive.

Regarding claims 1 and 7 applicant again argues that there is no teaching of an upper planar member in McAtee et al. The examiner again disagrees. Figure 5A shows an upper member that is substantially planar before the wetting of the cleaning article. Also the examiner takes upper and lower as being relative, no absolute terms. If the article of Figure 5A of McAtee et al. is flipped, then there is an upper planar layer and a lower layer with apertures that is substantially planar before the substrate is exposed to water. The fact that the layers of McAtee et al. extend to different extents when wet, does not change the fact that they are substantially planar when dry. Applicant also argues that there is no teaching of an intermediate apertured absorbent article and no teaching of an antibacterial layer on top of the intermediate layer and no teaching of a bottom layer as required by claim 1. As noted in the above rejection, there may be more than two paper fiber layers

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in the substrate, with any of the layers being apertured and the lathering soap may be put onto any of the layers. This broad teaching clearly teaches and allows the option of a three layer laminate with the middle layer being apertured and the soap layer being on the intermediate layer (read on by instant claim 1), as well as the preferred embodiment of McAtee of a two layer laminate (read on by instant claim 7) with the soap being impregnated in or forming a layer on the top surface of the optional intermediate or bottom layer.

Regarding claims 2, 3, 8 and 9 applicant argues that there is no thin ply with apertures. The examiner takes all of the layers of McAtee as being considered "thin" and as noted above any of them may be apertured. Regarding claim 4, 5, 6, 10-12 the lathering layer or impregnate of McAtee is moisture activated (col. 4, lines 10-15) and can be considered as an antibacterial agent, as are all soaps since they function in cleaning to remove bacteria. As the "body" is not a recited part of the combination, the source of the moisture being "from the body" is taken as an intended use. Since the laminate of McAtee is capable of being moisture activated, it is taken as being capable of being activated by moisture from the body. There is a further teaching, as noted in the above rejection, of

a biocide, which can be considered as a further antibacterial agent.

Applicant's arguments recite the instant claim limitations and the portions of the reference relied upon by the examiner, and then state that the limitations are not met and that the examiner has relied upon hindsight. It is simply not clear to the examiner how the structure and function of the various possible embodiments of McAtee et al. differ from the instant claimed structure and function as argued by applicant. Though McAtee et al. may not disclose in a single embodiment all of the limitations of the instant claims so as to form an anticipation, a reasonable reading of the reference teaches all of applicant's limitations as noted above.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will

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expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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WW/ww

November 13, 2004

A handwritten signature in black ink, appearing to read "William P. Watkins III", with a stylized flourish at the end.

**WILLIAM P. WATKINS III
PRIMARY EXAMINER**